

REMARKS

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

Applicants are submitting the present Amendment without prejudice to the subsequent prosecution of claims to some or all of the subject matter which might be disclaimed by virtue of this paper (although none is believed to be), and explicitly reserve the right to pursue some or all of such subject matter, in Divisional or Continuation Applications.

I. CLAIM STATUS AND AMENDMENTS

Claims 8-14 are pending in the application. Support for claims 8-14 may be found generally throughout the specification and claims. Claims 1-7 have been canceled.

No new matter has been added by the above claim amendments.

II. CLAIM OBJECTION

Claims 3, 4, and 7 were objected to for allegedly containing informalities. As noted above, claims 1-7 have been canceled. It is believed that new claims 8-14 have been drafted in manner that avoids the objections. In particular, the claims have been drafted to recite the term "panthenol".

III. INDEFINITENESS REJECTION

Claims 1-7 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for the reasons on pages 2-3 and separately for the reasons on page 3-4 of the Office Action. The rejections are respectfully traversed.

As noted above, claims 1-7 have been canceled. It is believed that new claims 8-14 have been drafted in manner that avoids the indefiniteness rejection.

IV. OBVIOUSNESS REJECTIONS

Claims 1-7 were rejected under 35 U.S.C. § 103(a) as being obvious over DESJONQUERES (U.S. 6,001,378) in view of HIRAMA et al. (U.S. 4,713,397) and ZAVERI et al. (U.S. 6,376,557) for the reasons on pages 4-6 of the Office Action. This rejection is respectfully traversed.

DESJONQUERES discloses a composition comprising organosilanol derivatives. Examples of such organosilanol derivatives are potassium monomethylsilanetriol, perhydrolysed dimethylsilicilylate, monomethylsilanetriol mannuronate, dimethylsilanol hyaluronate, ascorbyl methylsilanol pectinate, methylsilanol aspartate hydroxyprolinate. The compositions are described as being useful for treating alopecia.

HIRAMA disclose ubiquinone-containing drugs that reduce hair fall-out. In addition to containing ubiquinone, the drug may

contain skin peripheral vasodilator drugs, such as carpronium chloride, vitamin E nicotinate and benzyl nicotinate.

ZAVERI is directed to compositions and methods useful for promoting hair growth when applied to an area of skin that is afflicted with alopecia, as well as compositions and methods useful in transdermally delivering hair growth promoting agents applied topically to the areas of skin afflicted with alopecia.

Applicants submit that one skilled in the art would lack the motivation to combine and modify the above-identified publications in manner to obtain the claimed invention. In particular, one skilled in art would lack a reason to pick and choose a) octyl butyrate, b) glutamine peptides, c) hydroxyproline and aspartic acid, d) benzyl nicotinate, and e) panthenol as present in the claimed invention from the multitude of compositions disclosed in the above-identified publications.

Indeed, the present specification explains that the claimed invention exhibits an unexpected and synergistic action at pg. 4, lines 8-12, pg. 5, lines 20-24, pg. 6, lines 15-20; pg. 7, lines 1-5; and pg. 7, lines 36-39. In addition, the specification discusses clinical trial results beginning on pg. 7. In view of the above, applicants submit that one skilled in the art would lack the motivation to combine and modify the cited publications to obtain the claimed invention.

It is well established that to support a *prima facie* case of obviousness, the Office must provide a rationale showing that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions to yield predictable results. See, *KSR International Co. v. Teleflex Inc.*, 82 U.S.P.Q.2d 1385, 1395 (2007); and M.P.E.P. (Eighth Ed., Rev. 6 (September 2007) at § 2143.02.

Furthermore, applicants submit that one skilled in the art would lack the motivation to obtain a composition with the amounts as claimed. As the Examiner is aware, a particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation. *In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977) (The claimed wastewater treatment device had a tank volume to contractor area of 0.12 gal./sq. ft. The prior art did not recognize that treatment capacity is a function of the tank volume to contractor ratio, and therefore the parameter optimized was not recognized in the art to be a result-effective variable.). See also *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980) (prior art suggested proportional balancing to achieve desired results in the formation of an alloy).

None of the above-identified publications disclose or suggest that the combination of compounds or recited amounts. Accordingly, applicants submit that one skilled in the art would not consider the recited amounts as variables which achieve a recognized result.

Thus, in view of the above, applicants respectfully request the obviousness rejection be withdrawn.

V. CONCLUSION


In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance and early notice to that effect is hereby requested.

If the Examiner has any comments or proposals for expediting prosecution, please contact the undersigned attorney at the telephone number below.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON



Jay P. Williams, Reg. No. 48,036
209 Madison Street, Suite 500
Alexandria, VA 22314
Telephone (703) 521-2297
Telefax (703) 685-0573
(703) 979-4709

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